

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL )  
INDUSTRY AVERAGE )  
WHOLESALE PRICE LITIGATION )  
\_\_\_\_\_ )

MDL No. 146  
  
CIVIL ACTION: 01-CV-12257 PBS

\_\_\_\_\_ )  
THIS DOCUMENT RELATES TO )  
ALL CLASS ACTIONS )  
\_\_\_\_\_ )

Judge Patti B. Saris  
  
Chief Magistrate Judge  
Marianne B. Bowler

**CLASS PLAINTIFFS' MOTION TO  
STRIKE DECLARATION OF ERIC M. GAIER, PH.D**

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Fed. R. Evid. 702, Fed. R. Civ. P. 23 and other applicable law, the class plaintiffs move this Court for an order striking the Declaration of Eric M. Gaier filed by the Track 1 defendants in connection with the pending Motion for Class Certification.

In support therefor, plaintiffs state that the declaration of Eric M. Gaier fails to satisfy any standard of reliability for expert testimony in these class certifications. First, Dr. Gaier lacks the education, training, or experience to testify on complicated economic issues affecting the pharmaceutical industry. Second, Dr. Gaier conceded in his deposition that fundamental flaws and defects exist in the methodology of certain of his analyses. Third, his conclusions regarding payor negotiations reflect no independent analysis. Finally, Dr. Gaier's conclusions regarding purported knowledge of the AWP to ASP spread lack any evidentiary support.

In further support of this motion, the class plaintiffs submit: (i) Class Plaintiffs' Memorandum in Support of Motion to Strike Declaration of Eric M. Gaier; and (ii) Class Plaintiffs' Appendix to Class Plaintiffs' Motions to Strike Declarations of Eric M. Gaier, Steven J. Young, and Robert P. Navarro.

**Rule 7.1(A)(2) Certification**

Pursuant to L.R. D. Mass. 7.1(A)(2), the undersigned counsel hereby certifies that the MDL plaintiffs' class counsel have conferred with counsel for defendants in connection with this motion and have attempted in good faith to resolve or narrow the issues involved.

DATED: December 17, 2004

By /s/ Thomas M. Sobol

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